

IN SENATE OF THE UNITED STATES.

JANUARY 13, 1846.

Submitted, and ordered to be printed.

Mr. PENNYBACKER made the following

REPORT:

[To accompany bill S. No. 18.]

The Committee of Claims, to whom was referred the memorial of the executrix of William D. Cheever, deceased, report :

That they have considered the facts in this case, and that they concur with the Committee of Claims of the House of Representatives in their report, in this case, of the 18th of March, 1844, herewith filed and made a part of this report; and they report back to the Senate the bill referred to them without any amendment, and with a recommendation that it be passed.

IN THE HOUSE OF REPRESENTATIVES, MARCH 18, 1844.

Mr. VANCE, from the Committee of Claims, to whom was referred the memorial of the executrix of William D. Cheever, deceased, report :

That this is a claim on the part of Jeanette C. Huntington, the relict and sole executrix of William D. Cheever, deceased, and her husband, Samuel G. Huntington, to indemnity for losses sustained by her late husband on treasury notes, while furnishing supplies to the United States army, under his contract with the Secretary of War, dated the 14th June, 1814. The case was examined by the Committee of Claims of the House of Representatives at the 2d session of the 26th Congress, and a favorable report made thereon, (see Rep. No. 35,) but no further action appears to have been had at that session. It was again referred to the Committee of Claims of the House of Representatives at the 2d session of the 27th Congress, and a favorable report (No. 4) was made, concurring in and adopting the report referred to, accompanied with a bill for the petitioner's relief, which passed into a law. (See Laws United States, 2d session 27th Congress, page 202.)

Under this act, the Secretary of the Treasury made a report on the case to the House of Representatives on the 18th December, 1843, which, with the papers, has been referred to this committee; and, as the Secretary

has gone so fully into an examination of all the facts and evidence of the case, the committee have adopted it as part of this report; but, owing to doubts raised in the mind of the chairman of the committee, by the supplemental report of the Third Auditor of the Treasury, made on the 23d December, 1842, in answer to a letter of the Second Comptroller, (see paper marked A, appended to, and printed herewith,) as to the validity of certain items in said claim, the committee have again called upon the Secretary of the Treasury for explanation on these points, and have received his answer, enclosing an explanatory statement, made to him in consequence of said call, by the Second Comptroller, dated the 14th March, 1844, which is hereunto annexed, as part of the Secretary's report. This statement shows a balance due the estate of the said Cheever, of \$21,231 18; and, from a careful examination of all the papers and reports made in the case, the committee are of opinion that the petitioner is entitled to relief, and accordingly report a bill for the amount stated to be due by the Comptroller.

[To accompany bill S. No. 18.]

TREASURY DEPARTMENT,
December 18, 1843.

SIR: By the act of Congress, approved on the 30th August, 1842, entitled "An act for the relief of the legal representatives of W. D. Cheever," the Secretary of the Treasury is directed to cause the claim of said representatives, for losses on treasury notes, to be examined and audited; and to report the proceedings, and his opinion of its validity, to Congress. The following results are stated, in the order in which they are specified in the act.

1. The examination and audit of the claim by the proper accounting officers, under the limitations contained in the act, has been had, and is herewith submitted, showing a balance in favor of the legal representatives of W. D. Cheever of the sum of \$21,231 18. It will be found in the exhibit marked A.

2. No formal decision of the Secretary of War appears to have been made upon the claim to which the act refers. On inquiry into the grounds of its rejection, the Third Auditor (who was assistant accountant of the War Department when the claim arose) states that the question was never raised before the Secretary of War—for the reason, that it was held by the accounting officers that an act of Congress was necessary to authorize the allowance claimed. This is shown by the report of the Third Auditor of the 5th November, 1842, (marked B,) in the following terms: "No written decision of the Secretary of War, rejecting the claim for losses on treasury notes, is to be found with the accounts; nor can the papers be found to show that a decision from him, upon that particular claim, was ever sought. Charges in respect to such claims were disallowed, as a matter of course; the same having been deemed inadmissible without legislative authority." On application to the Secretary of War, I am informed that no such decision is found in the files and records of the War Department. The letter of the Secretary of War, and its enclosures, (marked C 1 and 2,) are herewith transmitted.

A misapprehension has evidently existed in regard to the presentation of this claim to the Secretary of War, for settlement, and its rejection by him.

It was presented to the accounting officers, and rejected by them in succession, upon grounds which, if correct, superseded all appeal except to Congress. The grounds of the rejection by them are sufficiently stated in the foregoing extract from the Third Auditor's report.

3. I have not been able to find any proof that the rejection of this claim was acquiesced in by Cheever. On the contrary, his letters to Mr. Monroe, of the 1st and 13th February, 1816, with the answer of Mr. Monroe, of the latter date, marked D 1, 2, and 3, respectively, show his importunity on this point. His letter to Peter Hagner, esq., accountant of the War Department, dated January 7, 1817, marked E, evinces perseverance in this claim. The letter written by myself, while in Congress, dated April 13, 1818, to the Secretary of War, transmitted from that department, and marked C 1, contains ample evidence of the same description.

4. An answer to the inquiry, "Why there has been such delay in the prosecution of this claim?" may be found in the statements contained in the letter of Elisha Jenkins, esq., dated October 19, 1842, marked F. The high character of Col. Jenkins entitles his statement to the fullest confidence.

5. Finally, the act requires from the Secretary of the Treasury the expression of his opinion "whether the representatives of the said Cheever have now a valid claim against the United States."

The principle upon which this claim rests has been recognised by the accounting officers, as I conceive, in the case of James Byers; the circumstances of which are stated in the report of the Third Auditor, of the 19th November, 1842, marked G.

Byers and Cheever were contractors for the subsistence of the army during the late war—the former in Massachusetts, the latter in New York. Both appear to have relied upon payments stipulated to be made to them, for the means of fulfilling their contracts with the War Department. The funds furnished both were treasury notes, charged to them respectively, on the books of the accounting officers, at par.

Byers appears to have stated to the Secretary of War that it would be impracticable for him to furnish the necessary supplies, unless funds equivalent to cash were paid him, to enable the required purchases to be effected. Upon this representation, the Secretary of War authorized him to sell the treasury notes issued to him for cash. The discount at which the sales were made was quite considerable. On the adjustment of his accounts, this discount was allowed him by the accounting officers, on the ground that this authority constituted a necessary and proper modification of his original contract. His accounts were audited upon that basis.

From the letter of Mr. Monroe, then Secretary of War, of the 16th October, 1814, marked H, it would seem that similar representations had been made to him by Cheever. Treasury notes, although depreciated below current funds at New York, were not at so great a discount as at Boston. Instead of authorizing them to be sold at once, as in the case of Byers, Mr. Monroe says: "The funds to meet the balance of your supplies for the present quarter must be remitted in treasury notes. Should they not become current, you must use them in aid of your credit, by borrowing the money until other arrangements can be adopted by the government." In no other way could the treasury notes be used "in aid of the credit" of Cheever, than by hypothecating them as collateral secu-

rity for the payment of the loans he should make. This was obviously contemplated, and was adopted.

A pledge of treasury notes, as security for loans, necessarily implied authority to dispose of the notes in default of payment of the moneys borrowed at the stipulated time, after a reasonable period. I can, therefore, perceive no essential difference between the grounds of this claim, and those upon which the claim of Byers was allowed. The latter was audited, because authority was given to sell the treasury notes at once in the market for what they might bring. In this case, an express direction was given to use the treasury notes in aid of the credit of the contractor, to raise money for the purchase of necessary supplies, under the expectation (to use the expression of the Secretary of War) that they would soon "become current." The expectation that they would become so, or that "other arrangements would be made by the government," induced the adoption of this mode of fulfilling the engagements of the government at New York, by an hypothecation, in preference to the immediate sale authorized to be made by Byers at Boston.

Cheever does not appear to have received express authority to sell treasury notes, except at par. Indeed, he was advised that they could only be disposed of by the government at that rate; but he had been authorized to pledge them; and the banks, with whom they were pledged, required the loans made upon them to be repaid. There was no alternative but a resort to the pledge. They were sold accordingly. The loss on such sales is chargeable to the United States, as equitably as though they had been originally ordered to be sold, because the sale is an inevitable consequence of the direction to hypothecate—no other provision being made for payment.

The Secretary of War cannot be supposed to have intended that the pledge was never to fulfil its office, and to be mere waste paper. The loans were temporary, and the hypothecation of the treasury notes must be of the same character. The principle upon which interest was allowed by the accounting officers upon these temporary loans, seems also to require that the loss on the sale of the treasury notes made to repay these loans should be allowed.

On these grounds, I am of opinion that the claim of the representatives of Cheever cannot be distinguished in principle from that of James Byers. They equally rest on the authority of the War Department, which did not expect nor intend that either of these contractors should receive the treasury notes issued to them, except for the purpose of raising current funds. They are entirely distinct from that class of claims where public creditors accepted treasury notes in payment and satisfaction at their value on their face, and afterwards sold them at a discount, according to their own discretion, and for their own purposes.

In this case, the government undertook to supply the contractor with current funds. Conscious that treasury notes were not of the description required by the contract, authority was given to use them in the only way in which "current funds" could be obtained. It is evident, also, from the former reports made in the case, that there was no unnecessary or wanton sacrifice made of the notes, but that they were fairly sold after the government had protested drafts made by Cheever, for sums admitted to be due him on his contract.

It is a claim, therefore, as it seems to the undersigned, not only of the strongest equity, but of strict legal right.

Besides the exhibits herein referred to, I herewith return the papers heretofore received from the office of the Clerk of the House of Representatives relative to this claim, numbered 1 to 17, inclusive.

Very respectfully, your obedient servant,

J. C. SPENCER,

Secretary of the Treasury.

HON. JOHN W. JONES,

Speaker of the House of Representatives.

A.

Supplemental report of the Third Auditor, on the claim under the act for the relief of the legal representatives of William D. Cheever, deceased, made in pursuance of a letter from the Second Comptroller, dated December 7, 1842.

The letter is accompanied by an additional document presented to the Comptroller by the counsel of the claimant, and which the letter expresses to have been referred by the Comptroller to the Auditor, "that the amount of losses sustained by said Cheever, on treasury notes paid to or deposited with him by the Secretary of War, as mentioned in the act for the relief of his legal representatives, may be ascertained agreeably to the directions of said act, which require that the claim shall be audited by the accounting officers of the treasury."

The document thus referred to appears to be headed "Sales of treasury notes for account of William D. Cheever, esq.," and to have been signed by Prime, Ward, & Sands, at New York, on the 3d of February, 1816—months after the dates of the certificates given by them, whereon Mr. Cheever originally preferred his claim; and it bears no evidence of its having formed the basis of any settlement between the parties. It is found to particularize the amount of the notes sold from time to time, the dates thereof, the rates of discount, the dates of the sales, the computations of interest the charges for brokerage, and the proceeds of the sales.

The result it exhibits may be thus stated:

Notes sold	-	\$657,200 00
Computations of interest	-	8,569 03
	-	\$665,769 03
Charges for brokerage	-	1,206 75
Aggregate of discounts, say	-	28,593 46
	-	29,800 21
	-	635,968 82
Deducting from the aggregate amount of the notes sold, viz:	657,200 00	
The proceeds as above	-	635,968 82
The loss will appear to have been	-	21,231 18

being less by \$8,095 82 than the sums heretofore claimed.

According to information derived from the office of the Register of the Treasury, all treasury notes, of the period in question, were dated either on the 1st, the 11th, or the 21st of a month; and the entries in the additional document, as to the dates of the notes sold, exhibit all that it contains of a tendency to show that the sales were of notes paid to or deposited with Mr. Cheever by the Secretary of War, as mentioned in the law. It neither expresses the notes sold to have been such as had been made *payable to Mr. Cheever*, (as all he received under the contract appears to have been,) nor specifies their numbers or respective denominations, whereby to ascertain their identity. Amongst the notes therein stated to have been sold, the entries evince several (amounting together to \$2,340) to have been dated on the 11th of October, 1814, and 1st February, 1815; and the fact of his having received none from the United States, of either of those dates, is manifested by the letter of the Register of the Treasury, filed with the papers. To that extent, therefore, it is obvious the notes must have been elsewhere acquired by him. All the advances in treasury notes received by him from the United States, are thereby shown to have been dated as follows, viz: as to

\$70,000 on the 21st of October, 1814.

200,000 on the 1st of November, 1814.

500,000 on the 1st of March, 1815.

As indicated in a former report, he appears to have obtained at the New York State Bank, a loan of \$75,000, on the 19th of October, 1814; and at the Mechanics' Bank, a loan of \$200,000, on the 5th of November, 1814; and he has, in the statement he made in support of his claim, declared that, "agreeable to the instructions of the Secretary of War, loans had been made by me, and treasury notes were deposited in the banks which loaned me moneys, as a collateral security." Before the discharge of the two loans above alluded to, sales appear by the aforesaid document to have been made of notes dated on the 21st of October, 1814, to the amount of \$57,760; and of notes dated on the 1st of November, 1814, to the amount of \$85,000; and if, as his statement implies, the notes he received from the United States, of those dates, were deposited in the banks as collateral security for the loans, it is not perceived how, at the times in question, he could have sold any of the same dates, unless he obtained them from some other source than the United States. Under circumstances such as have been adverted to, the additional document is not viewed by the Third Auditor as any sure criterion for ascertaining the extent to which the sales set down in it were of treasury notes paid to or deposited with Mr. Cheever by the Secretary of War, as mentioned in the law; and although the members of the firm of Prime, Ward, & Sands appear to be all dead, their books can doubtless be resorted to (as in August last they are shown to have been,) and more certain evidence be drawn therefrom, not only as to the names of the persons to whom the notes sold were made payable, or as to the numbers and denominations thereof, but also as to the actual settlement made between the firm and Mr. Cheever, in relation to the transactions.

In the examination the document has received, the interest, in various instances, has been found to have been computed for periods too short; and other apparent errors have been discovered, the effect of which would be to diminish the aforesaid balance of \$21,231 18

Under-calculations of interest on—

\$2,000 sold October 26, 1814	-	-	30
2,000 sold December 10, 1814	-	-	30
2,800 sold December 12, 1814	-	-	42
6,000 sold December 13, 1814	-	-	90
2,000 sold December 15, 1814	-	-	30
120 sold December 15, 1814	-	-	20
800 sold December 16, 1814	-	-	24
2,440 sold December 19, 1814	-	-	34

\$3 00

\$77,000 sold May 11 to 16, 1815, computed for but 2 months and 10 days from Mar. 1, 1815; at an average of 2 months and 13 days, the amount would be - \$843 15

Sum entered - - - 808 50

34 65

\$4,000 sold May 17, 1815—under calculated 6 days	-	-	3 60
6,000 sold May 18, 1815—under calculated 7 days	-	-	6 30
18,000 sold May 19, 1815—under calculated 8 days	-	-	21 60

\$69 15

Proceeds of \$1,500 sold November 5, 1814

—short extended - - - 8 00

Proceeds of \$180 sold October 28, 1814—

over-extended - - - 1 00

7 00

Discount on sales, March 18 to 25, 1815,

computed on \$5,000 at $3\frac{1}{2}$ p. ct. \$175 00

“ 10,000 at 4 p. ct. 400 00

“ 15,000 at 4 p. ct. 600 00

“ 5,000 at $4\frac{1}{4}$ p. ct. 212 50

“ 5,000 at 4. p. ct. 200 00

\$40,000 1,587 50

Brokerage on \$38,412 50 at $\frac{1}{4}$ p. ct. 96 03

1,683 53

In the original certificates of Prime, Ward, & Sands, (and attached to the duplicates of which, there is an affidavit of one of the firm as to the correctness thereof,) these \$40,000 are set down as having been sold at a discount of $3\frac{7}{10}$ per cent., amounting to

1,512 00

171 53

Discount on sales, March 27, 1815,
 computed on \$3,000 at $4\frac{1}{4}$ p. ct. \$127 50
 " 20,000 at $4\frac{1}{2}$ p. ct. 900 00

23,000	1,027 50	
Brokerage on \$21,972 50	54 93	
		1,082 43

These \$23,000 are set down in the afore-
 said certificates as having been sold at a
 discount of $3\frac{3}{4}$ per cent., amounting to 862 50
 219 93

Amount of notes sold, not received under
 the contracts dated October 11, 1814,
 and February 1, 1815 - 2,340 00

Proceeds	{	\$942 55
		76 22
		152 43
		939 25
		98 54

	2,208 99	
Brokerage	5 52	
		2,203 47
		136 53
		604 14
		<u>\$20,627 04</u>

The proviso in the law prohibits the crediting of any loss upon treasury notes paid to the said Cheever before the 25th of October, 1814, or after the 17th of June, 1815—which are the first and last dates of sale of treasury notes, entered in the certificates of Messrs. Prime, Ward, & Sands. The only notes received by Mr. Cheever from the United States, dated on the 21st of October, 1814, were advanced under a warrant issued on the 14th of that month; and his receipt for which, bearing the same date, and evincing him to have been then here in person, is on file in this office. He has, in his first account-current, credited the amount of that warrant as having been received in treasury notes on the 25th of October, 1814; and this is all that appears of a tendency to show that he had not previously acquired them.

The letter to him from the Secretary of War, dated on the 16th of October, 1814, is observed to contain as follows: "The same measures must be taken in relation to the seventy thousand dollars in treasury notes *late-ly received by you.*" And further testimony, evincing that he must have had them before the 25th of October, is furnished by the certificates of Messrs. Prime, Ward, & Sands, and their account of sales—these manifesting that the sales of the notes dated on the 21st, commenced on the 25th in New York. No additional proof as to the time of the delivery of them to Mr. Cheever can be collected here; the papers relating thereto having been destroyed at the conflagration of the Treasury building. The notes sold of the date of October 21, 1814, amounted to \$64,560; and if

the loss thereon is to be excluded, a deduction of \$3,177 56 will have to be made.

And if the allowances to Mr. Cheever, on the settlement of January, 1816, for interest, (which were made under a special engagement of the Secretary of War, entered into solely with reference to advances in treasury notes, and to prevent any disposal thereof below par,) are to be treated as a diminution of the loss on the sale of them, the amount of those allowances, being \$15,745 33, will have to be deducted.

Mr. Cheever does not appear, by his accounts in this office, to have ever accounted to the United States for the amount of interest due on the treasury notes at the time of sale. Transcripts of his accounts current, of the official statements of his accounts, and of the accompanying statements of differences, are amongst the papers whereon the act was passed.

PETER HAGNER, *Auditor.*

TREASURY DEPARTMENT,

Third Auditor's Office, December 23, 1842.

TREASURY DEPARTMENT,

Second Comptroller's Office, November, 1843.

The claim of the legal representatives of William D. Cheever, deceased, for losses sustained on treasury notes paid to or deposited with him by the Secretary of War, for the supply of provisions for the army of the United States, in the years 1814 and 1815, having been examined and audited by the Third Auditor of the Treasury, and reported to me for revision, I have carefully examined all the papers in the case referred to me by the Auditor; and am of opinion that the losses sustained by said Cheever, as aforesaid, amounted to \$21,231 18.

ALBION K. PARRIS, *Comptroller.*

TREASURY DEPARTMENT,

March 14, 1844.

SIR: I have the honor to transmit, herewith, the papers in relation to the claim of the representatives of the late William D. Cheever, with the desired explanation of the Second Comptroller, which appears to me conclusive.

Very respectfully, your obedient servant,

J. C. SPENCER,

Secretary of the Treasury.

HON. JOSEPH VANCE,

Chairman of the Committee of Claims,

House of Representatives.

TREASURY DEPARTMENT,

Second Comptroller's Office, March 14, 1844.

SIR: In reply to the inquiry of the Committee of Claims, why I did not make the deduction of \$15,745 33, and of \$3,177 56, mentioned in the

close of Mr. Hagner's report on the claim of the representatives of William D. Cheever, I have to state that the sum first mentioned is the amount of interest on money borrowed by said Cheever, on pledge of the treasury notes received by him from the treasury; which interest was allowed to him in the settlement of his accounts with the United States. The allowance of this sum cannot, in my opinion, be considered as a diminution of the loss sustained on the sale of said notes.

When those notes could no longer be made available as a pledge or security on which to raise money, they were sold at a discount; and, in calculating the loss to the claimant, the government is allowed the benefit of the interest which had accrued thereon up to the time of sale.

Thus the whole amount of the principal of the notes sold was - - - - - \$657,200 00
Amount of interest due on these notes at the time of sale - 8,569 03

Whole amount of principal and interest of notes sold - 665,769 03
The notes, including principal and interest, sold for - 637,175 57

Discount or loss on the whole - - - - - 28,593 46
Deduct the interest on the notes, as belonging to the United States—the claimant having been charged with the face of the notes only, and the United States having paid interest on the loans up to the time of sale - - - - - 8,569 03

Leaves as amount of discount on the principal of the notes, viz. \$657,200 - - - - - 20,024 43
To which add charges for brokerage and expenses of sale - 1,206 75

Amount of actual loss to Cheever - - - - - \$21,231 18

From this statement, predicated on the account of sales, and the Auditor's report, I think it will be apparent that the \$15,745 33 ought not to be deducted.

The reason why I did not deduct the sum of \$3,177 56, is, that I was not satisfied, from all the papers submitted to my examination, that the notes dated October 21, 1814, amounting to \$64,560, mentioned in the Auditor's report, being part of the \$657,200 sold as before mentioned, were "paid to said Cheever before the 25th of October, 1814."

The fact that Cheever credited them as received on that day, in his account exhibited to the department about the time of the transaction, and when there was no reason for supposing that the time would be material, and consequently no inducement to falsify, is admitted by the Auditor; and, in my judgment, should be taken as the true time when the notes were received, unless contradicted by unquestionable proof.

With entire respect, &c.,

ALBION K. PARRIS, *Comptroller.*

Hon. J. C. SPENCER,

Secretary of the Treasury.

A BILL for the relief of Jeanette C. Huntington, relict and sole executrix of William D. Cheever, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, directed to pay to Jeanette C. Huntington, relict and sole executrix of William D. Cheever, deceased, twenty-one thousand two hundred and thirty-one dollars and eighteen cents, out of any money in the treasury not otherwise appropriated, being the amount of his loss on treasury notes, while engaged in supplying the army of the United States, under contract with the Secretary of War, during the years eighteen hundred and fourteen and eighteen hundred and fifteen.

A BILL for the relief of Jennette C. Huntington, relict and sole executrix of William D. Cheever, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby directed to pay to Jennette C. Huntington, relict and sole executrix of William D. Cheever, deceased, twenty one thousand two hundred and thirty one dollars and eighteen cents, out of any money in the Treasury not otherwise appropriated, being the amount of his loss on Treasury notes, while engaged in supplying the army of the United States, under contract with the Secretary of War, during the years eighteen hundred and fourteen and eighteen hundred and fifteen.

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